IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9705 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes. : YES

2. To be referred to the Reporter or not? No. :

3. Whether Their Lordships wish to see the fair copy of the judgement? No. : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No. : NO

5. Whether it is to be circulated to the Civil Judge? No. : NO

ABDUL MALIK @ THOTIO ABDUL KHALIK ANSARI

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR UDAY BHATT A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 07/11/2000

ORAL JUDGEMENT

Heard learned advocate Ms. Krishna U. Mishra and learned A.G.P. Mr. Uday Bhatt for all the respondents.

2. Vide the detention order dated 11-4-2000 the respondent no.2 - Commissioner of Police for the city of

Ahmedabad passed the order of detention of the petitioner u/s 3 (1) of the Gujarat Prevention of Anti - Social Activities Act, 1985 (PASA Act for short).

3. The Commissioner of Ahmedabad exercised the power conferred upon him u/s 3 (1) of the PASA Act.

4. This petition is filed by the petitioner challenging the above said detention order. The detenu petitioner is in actual detention from 12-4-2000. The copy of the order is produced at Annexure-B. The grounds of detention supplied to the petitioner are produced at Annexure-C of the petition. The respondent no. 3 has mentioned the fact that three crimes have been registered against the petitioner, which are as under :

(i) Rakhial Police Station I. CR. No.18/99 for the offence punishable u/s 452-427-114 of the IP Code on 16-2-1999.

(ii) Rakhial Police Station I. CR. No.48/99 for the offence punishable u/s 326-294A-114 of the IP Code and u/s 135 (1) of the Bombay Police Act, on 17-5-2000.

(iii) Bapunagar Police Station I. CR. No.95/2000 for the offence punishable u/s 492-114, on 15-3-2000.

5. The facts of the above cases have been mentioned by the detaining authority in the above said order. The detaining authority has considered the statements of the witnesses recorded in the above said Crime Registers. The other documents like Panchanama etc. have also been considered by the detaining authority. The detaining authority has also considered that two witnesses who had chosen to remain anonymous due to fear of the petitioner, have given their statements against the petitioner. The witnesses gave their statements on the assurance of the secrecy of their identity. From the above material, the detaining authority came to the conclusion that the petitioner was a dangerous person within the meaning of Section 2 (c) of the PASA Act. It was also considered that general provisions of law were insufficient to prevent the petitioner from continuing his antisocial activities affecting adversely maintenance of public order including externment proceedings and bail cancellation proceedings.

6. The petitioner has challenged the above order on

various rounds. As per the facts mentioned in one of the Crime Registers mentioned above, at the relevant time the petitioner was in the judicial custody. While in other two Crime Registers, he was on bail. It has also been averred in the petition that the detaining authority has not supplied any material to show that the public order has ever been disturbed at the time of commission of the cases referred to above. It is averred that subjective satisfaction is vitiated on that ground. There is malafide exercise of power u/s 9 (2) of the PASA Act by the detaining authority in not disclosing identity of the anonymous witnesses. It is also averred that the detaining authority has not considered the fact that in the above cases the prosecution agency did not think it fit to file bail cancellation proceedings before the competent Court.

7. Other various grounds are urged on behalf of the petitioner. While the learned A.G.P. has vehemently supported the detention order.

8. In the matter of Zubedaben Rasidkhan Pathan Vs. State of Gujarat & Others, reported in 1995 (2) G.L.R.1134., the Division Bench of this Court expressed the view that nonconsideration of the less drastic remedy by the detaining authority like cancellation of bail u/s 437 (5) of the Cri. Pro. Code, amounts to non-application of mind vitiating the detention order. This view was again expressed by the Division Bench of this Court in Letters Patent Appeal No. 1056/99 decided on 15-9-1999.

9. Perusing and scrutinizing the detention order, it is clear that in two of the cases, the petitioner was on bail. While at the relevant time in one of the cases, he was in the judicial custody. The detaining authority has, however, satisfied itself by saying that cancellation of bail or externment proceedings will take long time. Externment proceedings as well as cancellation of bail proceedings are not formal provisions of the Cri. Pro. Code and in the proper case remedy of cancellation of bail u/s 437 (5) of the Cri. Pro. Code would be a proper remedy. In sum and substance, without considering this aspect, subjective satisfaction of the detaining authority by mere saying that this would take long time or not sufficient remedy, would undoubtedly amounts to nonapplication of mind by the detaining authority qua the facts of the case and therefore the subjective satisfaction of the detaining authority is vitiated qua the facts of the case and the impugned detention order would, therefore, be required to

be set aside on this ground alone.

10. In view of the above discussion, this petition is allowed. The detention order dated 11-4-2000 passed by the respondent no. 2 - Police Commissioner, Ahmedabad City against the petition is hereby ordered to be quashed and set aside. Petitioner - Abdul Malik @ Thotio Abdul Khalik Ansari is ordered to be set at liberty forthwith, if he is not required for any other purpose. Rule is made absolute, to that extent. D.S. is permitted.

-0-0-0-0-0-

/JVSatwara/